

**IN THE U.S. DISTRICT COURT FOR MARYLAND,
SOUTHERN DIVISION**

BEYOND SYSTEMS, INC.

Plaintiff

v.

WORLD AVENUE USA, LLC, ET AL.

Defendants

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Case No. 8:08-cv-00921

INITIAL DECLARATION OF PAUL A. WAGNER

I, Paul A. Wagner, state the following under oath:

1. I am over 18 years of age, have personal knowledge of the matters stated below unless otherwise indicated, and am competent to testify to the facts set forth in this Declaration.

2. I formed Beyond Systems, Inc. ("BSI") as a Maryland corporation in 1996. Its principal offices are located at 9501 Anchorage Place, Bethesda, MD 20817.

3. Since 1996, BSI has provided Internet connectivity and interactive computer services, including electronic mail service, to hundreds of known users and many thousands of unknown users, including many users in Maryland.

4. BSI maintains servers in Maryland at 1612 Sherwood Road, Silver Spring, MD 20902. These servers include e-mail servers that accept and deliver e-mail messages to and from BSI and its clients and other servers used for BSI and its clients.

5. BSI provides Internet services, technology consulting, and advanced research on emerging technologies. Within these categories are a number of specific services which enable computer access by multiple users to a computer service, including, for example: enterprise architecture (analysis, design, and development); distributed applications (scalability, failover,

cross-platform); wireless initiatives (access, solutions, P2P, mobile computing); Internet security (spam, PKI, VPNs, firewalls, survivability); network support (LAN and client/server setup, support & management); and management (strategic planning, marketing, CRM, supply chain).

6. BSI provides Internet access and hosting services for multiple users, including e-mail servers, web servers, DNS servers, e-commerce services, database services, and backup services.

7. BSI has hosted approximately 110 domain names for use by BSI or its clients and it assigns IP addresses it owns to clients for their use in accessing and providing services via the Internet.

8. The registrations for BSI's domains show BSI's physical address in Maryland.

9. Between April 15, 2004 and the present, BSI has received on its computer servers in Maryland, over 35,000 commercial electronic mail messages containing false or misleading information in their subject lines, or as to their transmission paths or paths of origin, promoting the business of World Avenue USA, LLC ("World Avenue").

10. World Avenue's emails have caused numerous adverse effects to BSI and its clients, including decreased server response, crashes, higher bandwidth utilization, forced upgrades of expensive hardware and software, frustration of customers, and loss of staff time.

11. Exhibit 9, attached, is a copy of an email that is typical of hundreds of other similar emails received by BSI in that they all contain IP address in their "Received from:" fields within the same block, they all contain similar sales links, and they all promote World Avenue, as further described below. (This group of similar emails is referenced below as "the Exhibit 9 group.") More specifically, the message in Exhibit 9 promotes an incentive award offered by World Avenue, entitled "Exclusive Gift Cards." (See Exhibit 11, Florida Attorney General

official statement). The “Received from” field in the Exhibit 9 group of emails contains the IP address 64.187.127.104 and/or other IP addresses in the same block, as shown in Exhibit 10. I looked up the IP address in this block with the American Registry for Internet Numbers’ Whois database and observed that these IP addresses were assigned to AccelerateBiz.com, as also shown in Exhibit 10. The email in Exhibit 9 also invites the user to click on the link, <http://adt3chsearch.com/c/zr0jGbhCGR4j87SRlaOEBQ.html?0>. Similar links, containing “adt3chsearch.com/c” plus 22 characters, appear in the other emails within the Exhibit 9 group. Because of these common features, it appears that the emails within the Exhibit 9 group emanated from a single sender.

11. The appearance of IP addresses assigned to AccelerateBiz.com in the “Received from:” field in the headers of the emails in the Exhibit 9 group shows that those emails emanated from servers on AccelerateBiz.com’s network.

12. I have reviewed the emails at issue in this case and have observed that there are other groups of emails that share common features, analogous to the sharing of common features within the Exhibit 9 group described above.

I declare under penalties of perjury that the foregoing statements are true and correct.

Date: May 10, 2008



Exhibits

- 9 Sample Email (“Exclusive Gift Card”)
- 10 ARIN Whois listing for Accelerate.com
- 11 Florida Attorney General News Release